

**271B.12-220 Exemptions from minimum share vote requirements.**

- (1) For purposes of subsection (2) of this section:
  - (a) "Announcement date" means the first general public announcement of the proposal or intention to make a proposal of the business combination or its first communication generally to shareholders of the corporation, whichever is earlier;
  - (b) "Determination date" means the date on which an interested shareholder first became an interested shareholder; and
  - (c) "Valuation date" means:
    1. For a business combination voted upon by shareholders, the latter of the day prior to the date of the shareholders vote or the date twenty (20) days prior to the consummation of the business combination; and
    2. For a business combination not voted upon by shareholders, the date of the consummation of the business combination.
- (2) The vote required by KRS 271B.12-210 does not apply to a business combination if each of the following conditions is met:
  - (a) The aggregate amount of the cash and the market value as of the valuation date of consideration, other than cash to be received per share by holders of common stock in such business combination, is at least equal to the highest of the following:
    1. The highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the interested shareholder for any shares of common stock of the same class or series acquired by it:
      - a. Within the five (5) year period immediately prior to the announcement date of the proposal of the business combination;
      - b. In the transaction in which it became an interested shareholder, whichever is higher; or
    2. The market value per share of common stock of the same class or series on the announcement date or on the determination date, whichever is higher; or
    3. The price per share equal to the market value per share of common stock of the same class or series determined pursuant to subparagraph 2. of this paragraph, multiplied by the fraction of:
      - a. The highest per share price, including any brokerage commissions, transfer taxes and soliciting dealers' fees, paid by the interested shareholder for any shares of common stock of the same class or series acquired by it within the five (5) year period immediately prior to the announcement date, over
      - b. The market value per share of common stock of the same class or series on the first day in such five (5) year period on which the interested shareholder acquired any shares of common stock;

- (b) The aggregate amount of the cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of shares of any class or series of outstanding stock other than common stock is at least equal to the highest of the following, whether or not the interested shareholder has previously acquired any shares of a particular class or series of stock:
1. The highest per share price, including any brokerage commissions, transfer taxes and soliciting dealers' fees, paid by the interested shareholder for any shares of such class of stock acquired by it:
    - a. Within the five (5) year period immediately prior to the announcement date of the proposal of the business combination;
    - b. In the transaction in which it became an interested shareholder, whichever is higher; or
  2. The highest preferential amount per share to which the holders of shares of such class of stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation;
  3. The market value per share of such class of stock on the announcement date or on the determination date, whichever is higher; or
  4. The price per share equal to the market value per share of such class of stock determined pursuant to subparagraph 3. of this paragraph, multiplied by the fraction of:
    - a. The highest per share price, including any brokerage commissions, transfer taxes and soliciting dealers' fees, paid by the interested shareholder for any shares of any class of voting stock acquired by it within the five (5) year period immediately prior to the announcement date, over
    - b. The market value per share of the same class of voting stock on the first day in such five (5) year period on which the interested shareholder acquired any shares of the same class of voting stock.
- (c) In making any price calculation under this section, appropriate adjustments shall be made to reflect any reclassification, including any reverse stock split; recapitalization; reorganization; or any similar transaction which has the effect of reducing the number of outstanding shares of the stock. The consideration to be received by holders of any class or series of outstanding stock is to be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series of stock. If the interested shareholder has paid for shares of any class of stock with varying forms of consideration, the form of consideration for such class of stock shall be either cash or the form used to acquire the largest number of shares of such class or series of stock previously acquired by it;
- (d) 1. After the interested shareholder has become an interested shareholder and prior to the consummation of such business combination:

- a. There shall have been no failure to declare and pay, at the regular date therefor, any full periodic dividends, whether or not cumulative, on any outstanding preferred stock of the corporation;
    - b. There shall have been no reduction in the annual rate of dividends paid on any class or series of stock of the corporation that is not preferred stock, except as necessary to reflect any subdivision of the stock; and an increase in such annual rate of dividends as necessary to reflect any reclassification, including any reverse stock split; recapitalization; reorganization; or any similar transaction which has the effect of reducing the number of outstanding shares of the stock; and
    - c. The interested shareholder did not become the beneficial owner of any additional shares of stock of the corporation, except as part of the transaction which resulted in such interested shareholder becoming an interested shareholder or by virtue of proportionate stock splits or stock dividends.
  - 2. The provisions of sub-subparagraphs a. and b. of subparagraph 1. of this paragraph do not apply if no interested shareholder or an affiliate or associate of the interested shareholder voted as a director of the corporation in a manner inconsistent with such sub-subparagraphs and the interested shareholder, within ten (10) days after any act or failure to act inconsistent with such sub-subparagraphs, notifies the board of directors of the corporation in writing that the interested shareholder disapproves thereof and requests in good faith that the board of directors rectify such act or failure to act.
- (3) (a) Whether or not such business combinations are authorized or consummated in whole or in part after July 13, 1984, or after the interested shareholder became an interested shareholder, the requirements of KRS 271B.12-210 do not apply to business combinations that specifically, generally, or generally by types, as to specifically identified or unidentified existing or future interested shareholders or their affiliates or associates, have been approved or exempted therefrom by resolution of the board of directors of the corporation prior to two (2) months after July 13, 1984, or such earlier date as may be irrevocably established by resolution of the board of directors; and
- (b) Unless by its terms a resolution adopted under this subsection is made irrevocable, it may be altered or repealed by the board of directors, but this shall not affect any business combinations that have been consummated, or are the subject of an existing agreement entered into, prior to the alteration or repeal.
- (4) (a) Unless the articles of incorporation or bylaws of the corporation specifically provide otherwise, the requirements of KRS 271B.12-210 do not apply to business combinations of a corporation that, on July 13, 1984, had an existing interested shareholder, whether a business combination is with the existing shareholder or with any other person who becomes an interested shareholder,

after July 13, 1984, or their present or future affiliates, unless, at any time after July 13, 1984, the board of directors of the corporation elects by resolution, adopted by a majority of the continuing directors at a meeting of the board of directors at which a quorum consisting of at least a majority of the continuing directors is present, to be subject, in whole or in part, specifically, generally, or generally by types, as to specifically identified or unidentified interested shareholders, to the requirements of KRS 271B.12-210;

- (b) The articles of incorporation or bylaws of the corporation may provide that if the board of directors adopts a resolution under paragraph (a) of this subsection, the resolution shall be subject to approval of the shareholders in the manner and by the vote specified in the articles of incorporation or the bylaws;
  - (c) An election under this subsection may be added to but may not be altered or repealed except by an amendment to the articles of incorporation adopted by a vote of shareholders meeting the requirements of subsection (5)(a)2. of this section; and
  - (d) If a corporation elects under this subsection to be included within the provisions of KRS 271B.12-210 generally, without qualification or limitation, it shall file with the secretary of state articles of amendment, including a copy of the resolution making the election and a statement describing the manner in which the resolution was adopted. The articles of amendment shall be executed in the manner required by KRS 271B.10-060.
- (5) (a) Unless the articles of incorporation of the corporation provide otherwise, the requirements of a shareholder vote and board approval in KRS 271B.12-210 do not apply to any business combination of:
- 1. A corporation which does not have on the date any interested shareholder became an interested shareholder:
    - a. Five hundred (500) or more beneficial owners of its stock;
    - b. Its principal executive office located in this state; and
    - c. One (1) or more of the following:
      - (i) More than two hundred (200) beneficial owners of its stock residing in this state;
      - (ii) More than ten percent (10%) of the beneficial owners of its stock residing in this state;
      - (iii) More than ten percent (10%) of its outstanding stock owned by residents of this state;
      - (iv) More than one hundred (100) employees of the corporation and its subsidiaries working within this state; or
      - (v) Assets located in this state and owned by, or owned by a person or entity controlled by, the corporation with a value of at least one million dollars (\$1,000,000);

2. A corporation whose original articles of incorporation have a provision, or whose shareholders adopt an amendment to the articles of incorporation after July 13, 1984, by a vote of at least eighty percent (80%) of the votes entitled to be cast by outstanding shares of voting stock of the corporation, voting together as a single voting group and two-thirds (2/3) of the votes entitled to be cast by persons, if any, who are not interested shareholders of the corporation, voting together as a single voting group, expressly electing not to be governed by KRS 271B.12-210; or
  3. An investment company registered under the federal Investment Company Act of 1940, as amended; a bank or a bank holding company as defined in the federal Bank Holding Company Act of 1956, as amended; a savings and loan holding company as defined in the federal Savings and Loan Holding Company Amendments of 1967, as amended; and a domestic insurer as defined under KRS 304.1-070; and
- (b) For purposes of subparagraph 1. of paragraph (a) of this subsection, all shareholders of a corporation who have executed an agreement to which the corporation is an executing party governing the purchase and sale of stock of the corporation or a voting trust agreement governing stock of the corporation shall be considered a single beneficial owner of the stock covered by the agreement.

**Effective:** January 1, 1989

**History:** Amended 1988 Ky. Acts ch. 22, sec. 3, effective July 15, 1988; and ch. 23, sec. 176, effective January 1, 1989. -- Created 1984 Ky. Acts ch. 355, sec. 3, effective July 13, 1984.

**Formerly codified as** KRS 271A.398.